Orally Modified

Council on American-Islamic Relations-California, et al. v. Los Angeles Mayor's Office of Public Safety, et al., BS174139

~~Tentative~~ decision on petition for writ of mandate: granted in large part

Petitioners Council on American-Islamic Relations, Vigilant Love Coalition, Asian Americans Advancing Justice-Los Angeles, and American Civil Liberties Union Foundation of Southern California petition the court for a writ of mandate directing Respondents Los Angeles Mayor's Office of Public Safety ("MOPS"), Los Angeles Human Relations Commission ("HRC"), and the Los Angeles Police Department ("LAPD") (collectively, "City")[1] to conduct searches for Petitioners' specified search terms and to produce all documents responsive to Petitioners' California Public Records Act ("CPRA") request.

The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

A. Statement of the Case

1. Petition

Petitioners commenced this action on June 28, 2018, alleging causes of action for failure to comply with the CPRA. The verified Petition alleges in pertinent part as follows.

In 2011 the Obama administration initiated the Countering Violent Extremism ("CVE") program to combat efforts by al-Qaida and its affiliates and adherents from inciting Americans to support or commit acts of violence in the United States. CVE programs have largely focused on rooting out radicalization within American Muslim communities, stigmatizing them as inherently suspect, and targeting other suspect communities.

Each of MOPS, HRC, and LAPD has participated, and presently participates, in developing local CVE programs in the City. On February 7, 2017, Petitioners submitted to each of MOPS, HRC, and LAPD a CPRA request for records relating to CVE programming in the City (the "February 2017 Request" or the "Request"). Each of MPOS, HRC, and LAPD has engaged in a practice of systematic delay by denying its obligation to conduct a search in the first instance, providing cryptic promises to produce responsive documents, imposing unilateral and unreasonable extensions on deadlines to produce documents well beyond any time permitted by the CPRA, making deficient productions demonstrating that it conducted an inadequate search and omitted key documents reasonably believed to exist, and falsely claiming it has no further responsive documents.

HRC disclaims ongoing involvement with the City's CVE program. HRC was a key player in developing the City's CVE Framework. As evidenced by recent email communications, HRC presently collaborates with MOPS' CVE strategy director, who was formerly housed under HRC, to perform CVE-related work. Consistent with this fact, HRC has not conducted a reasonable search to locate and produce responsive records. Since Petitioners made the February 2017 Request, HRC has produced just four documents, one of which was provided by Petitioners. HRC's position that it lacks responsive records is not credible.

[1] Although Petitioners refer to MOPS, HRC, and LAPD as Respondents, the City is the Respondent and MOPS, HRC, and LAPD are departments or other entities within the City.

LAPD categorically refused to search for responsive documents for at least nine months, despite the facts that one of its leaders oversees the City's CVE efforts and that the February 2017 Request specifically requested records about LAPD's well-documented CVE program. Only after Petitioners' repeated communications with the City did LAPD make a small, incomplete production on December 1, 2017. There was no factual or legal basis for LAPD's initial nine-month delay in producing responsive records. LAPD's limited production confirms its continual and active involvement in developing the City's CVE programs and suggest that it has been proactively working with MOPS to develop the CVE program Petitioners sought in their Request.

MOPS has also engaged in a string of dilatory tactics and, to date, has failed to produce numerous responsive records reasonably believed to exist. MOPS is the primary local agency spearheading the City's extensive CVE operations. Despite its obvious possession of responsive records, MOPS delayed in producing documents for nearly half a year, including repeated, unilaterally imposed "extensions". After months of delay, MOPS made a production that it has now conceded was deficient. Namely, MOPS (1) did not produce a substantial number of responsive and non-privileged documents; (2) produced documents that are demonstrably incomplete; and (3) did not conduct the reasonable search required by law.

Respondents' failure to conduct an adequate search for and to provide all records that Petitioners requested within the legally required period violates their duties under the CPRA.

B. Governing Law

The CPRA was enacted in 1968 to safeguard the accountability of government to the public. San Gabriel Tribune v. Superior Court, (1983) 143 Cal.App.3d 762, 771-72. Government Code[2] section 6250 declares that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." The CPRA's purpose is to increase freedom of information by giving the public access to information in the possession of public agencies. CBS. Inc. v. Block, (1986) 42 Cal.3d 646, 651. The CPRA was intended to safeguard the accountability of government to the public, and it makes public access to governmental records a fundamental right of citizenship. Wilson v. Superior Court, (1996) 51 Cal.App.4th 1136, 1141. This requires maximum disclosure of the conduct of government operations. California State University Fresno Assn., Inc. v. Superior Court ("California State University"), (2001) 90 Cal.App.4th 810, 823.

The CPRA makes clear that "every person" has a right to inspect any public record. §6253(a). The term "public record" is broadly defined to include "any writing containing information relating to the conduct of the people's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics. §6252(e). The inspection may be for any purpose; the requester's motivation is irrelevant. §6257.5.

The right to inspect is subject to certain exemptions, which are narrowly construed. California State University, *supra*, 90 Cal.App.4th at 831. The exemptions are found in sections 6254 and 6255 and include personnel information, deliberative process, private information and others.

Upon receiving a request for a copy of public records, an agency has to determine within 10 days whether the request seeks public records in the possession of the agency that are subject to disclosure, though that deadline may be extended up to 14 days for "unusual circumstances."

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[2]All further statutory references are to the Government Code unless expressly stated otherwise.

§6253(c). If the agency determines that the requested records are not subject to disclosure, the agency promptly must notify the person making the request and provide the reasons for its determination. Ibid.

If the agency determines that the requested records are subject to disclosure, it must state in the determination "the estimated date and time when the records will be made available." Ibid. There is no deadline expressed in a number of days for actually producing the records. Rather, section 6253(b) says the agency "shall make the records promptly available." Further, section 6253(d) provides that nothing in the CPRA "shall be construed to permit an agency to delay or obstruct the inspection or copying of public records."

"Records requests . . . inevitably impose some burden on government agencies. An agency is obliged to comply so long as the record can be located with reasonable effort." California First Amendment Coalition v. Superior Court, ("California First Amendment") (1998) 67 Cal.App.4th 159, 165-66. "Reasonable efforts do not require that agencies undertake extraordinarily extensive or intrusive searches, however. [Citation.] In general, the scope of an agency's search for public records 'need only be reasonably calculated to locate responsive documents.'" City of San Jose v. Superior Court, ("San Jose") (2017) 2 Cal.5th 608, 627. The "CPRA does not prescribe specific methods of searching for those documents. Agencies may develop their own internal policies for conducting searches. Some general principles have emerged, however. Once an agency receives a CPRA request, it must 'communicate the scope of the information requested to the custodians of its records,' although it need not use the precise language of the request. [Citation.]." Ibid.

A CPRA claim to compliance with a public records request may proceed through mandamus or declaratory relief. §§6258, 6259. A petition for traditional mandamus is appropriate in actions "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station." CCP §1085. Because the petitioner may proceed through either mandamus or declaratory relief, the trial court independently decides whether disclosure is required. *See* City of San Jose v. Superior Court, (1999) 74 Cal.App.4th 1008, 1018 (appellate court independently reviews trial court CPRA decision). No administrative record is required, and the parties must submit admissible evidence.

A traditional writ of mandate under CCP section 1085 is the method of compelling the performance of a legal, ministerial duty. Pomona Police Officers' Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-584. Generally, mandamus will lie when (1) there is no plain, speedy, and adequate alternative remedy, (2) the respondent has a duty to perform, and (3) the petitioner has a clear and beneficial right to performance. Id. at 584. The issue of ministerial duty is a question of law decided by the court *de novo.* *See* McGhan Medical Corp. v. Superior Court, (1992) 11 Cal.App.4th 804, 808. Where there are factual issues, the court must uphold the agency's action unless it is "arbitrary and capricious, lacking in evidentiary support, or made without due regard for the petitioner's rights." Sequoia Union High School District v. Aurora Charter High School, (2003) 112 Cal.App.4th 185, 195.

C. Statement of Facts

1. Petitioner's Evidence

a. Background

CVE programs comprise a diffuse set of public-private partnerships intended to identify and intervene against individuals on the path to radicalization and violence, with a focus on American Muslims. *See* Hoq Decl. Ex. A, pp. 4-5, 7.

Each of MOPS, LAPD, and HRC has a history of collaboration with government agencies and community partners to develop CVE-related programs since at least 2008. Hoq Decl. Ex. A, pp. 3-4. The City has been one of the most prominent regions where the federal government has helped develop and implement CVE-related programs, which find their roots in an Interagency Coordination Group (LA CVE ICG"), the participants in which included federal agencies (*e.g.,* the Department of Homeland Security ("DHS"), the United States Attorney's Office, and the FBI), local law enforcement agencies (*e.g.,* Los Angeles Sheriff's Department and LAPD), and City agencies (*e.g.,* MOPS and HRC). Hoq Decl., Ex. A (Ex. A, p. 3). Given its goal of building relationships with communities to counter violent extremism, the CVE Framework established community partnerships with Muslim groups, including the Muslim Public Affairs Council ("MPAC') and Bayan Claremont, an Islamic Graduate School affiliated with the Claremont School of Theology. Hoq Decl., Ex. A, p. 4.

Shortly after establishment of the LA CVE ICG, the United States Department of Justice announced a "CVE Pilot Program and identified Los Angeles as a pilot city for the program. Hoq Decl. Ex. A, p. 4. MOPS submitted a grant proposal to DHS's CVE Grant program, seeking $1.5 million in funding for "managing interventions," "training and engagement," and "developing resilience." Hoq Decl. Ex. B. MOPS proposed coordinating with City and Los Angeles County law enforcement and other agencies, including LAPD and HRC, to provide expertise and support to community-based partners such as MPAC to counter violent extremism in the City. Hoq Decl., Ex. A, pp. 5, 12-14; Ex. B, LAPRA[3]-6. In January 2017, MOPS was awarded nearly $1 million to work in collaboration with local agencies, including LAPD and HRC, and local community groups, most of which provide direct social services to Muslim, Arab and African immigrants, to help identify violent extremism in their communities. Hoq Decl. Ex. D.

Although MOPS, HRC, and LAPD now claim that they have abandoned their CVE programs, they have developed a complex and collaborative approach to CVE in conjunction with several local and federal agencies that have developed their own robust and ongoing CVE programs. Petitioners have discovered close collaboration between City officials engaged in the CVE Framework and the California State Office of Emergency Services ("Cal OES"). The result of this collaboration has been the development of Cal OES's Preventing Violent Extremism ("PVE") program, a program closely modeled on federal and City CVE programs. Hoq Decl. Ex. E, p. LAPRA 7961; Ex. F, p. LAPRA 4331. This collaboration appears to date to November 2011, when HRC submitted a proposal to Cal OES, known then as California Emergency Management Agency ("Cal EMA"), with the title "A Proposal to Cal EMA CVE." Hoq Decl. Ex. G.

LAPD continues to engage in CVE-related programs. In 2014, the City passed a resolution identifying CVE-programming as a top priority for LAPD. Hoq Decl. Ex. H. As part of this work, LAPD created its RENEW program, through which LAPD partnered with the FBI's Joint Terrorism Task Force, the Joint Regional Intelligence Center, and mental health and social services providers to identify subjects. Hoq Decl. Ex. A (Ex. G); Ex. I. Sometime in 2017, RENEW was rebranded as Providing Alternatives to Hinder Extremism ("PATHE"). Hoq Decl. Ex. J, p. LAPRA-3035. As part of PATHE, LAPD hosts workshops to help providers identify risk factors (including religious, political and community affiliation) associated with violent extremism. Hoq Decl. Ex. J. Recent evidence suggests PATHE remains in active operation; LAPD conducted a webinar on the PATHE program as recent as late February 2019. Hoq Decl. Ex. K.

[3] "LAPRA" refers to the Bates stamp on some of the exhibits attached to the Hoq declaration.

b. The Request

On February 7, 2017, Petitioners submitted the Request to MOPS, LAPD, and HRC because of their known involvement in CVE-related programming. Hoq Decl. Ex. A. The Request seeks 13 categories of records, including those relating to (a) any grant proposal for the 2016 CVE Grant Program and any CVE grant received by the City or other organization and (b) any CVE-related program, including programs created, initiated, or involving any community partner that reflects the community-based models federal, state, and local governments have designed to implement CVE programs. Hoq Decl. Ex. A, pp. 8-9. Additionally, the Request seeks information regarding specific CVE-related programs found to be related to and modeled after CVE frameworks, including the "Recognizing Extremist Network Early Warnings" ("RENEW") and Respondent MOPS' Community Advisory Committee, which was established to develop positive alternatives to violence with a public health framework. Hoq Decl. Ex. A, p. 9. The Request also seeks records for information typical of grants and their operation, including any conditions, deliverables or reporting requirements, program performance metrics, and evaluations. Hoq Decl. Ex. A, p. 9.

Between October 2018 -- when the court first ordered the parties to meet and confer to resolve their differences -- and August 2019 -- the most recent trial setting conference -- the parties have engaged in three sets of formal meet-and-confer sessions. Hoq Decl. Exs. N, T, U. Petitioners also engaged in limited discovery through person-most-knowledgeable ("PMK") depositions about the City's search methodologies in order to obtain information about the adequacy of the searches. Hoq Decl. Exs. L, N, P, V.

Petitioners learned through this process that each City agency had applied deficient methodologies falling short of their CPRA obligations. LAPD applied varying and arbitrary search terms for each of its constituent units and searched the records of certain individual custodians while omitting other known CVE collaborators without giving a reason. Hoq Decl. Ex. L. HRC used a limited set of terms across various custodians, while certain key custodians remained missing altogether. Hoq Decl. Ex. M.

Petitioners voiced their concerns with MOPS through extensive discussions, which initially remained open to a broader list of search terms proposed by Petitioners. MOPS ultimately ignored Petitioners' concerns and continued ahead with its initial terms and list of custodians. Hoq Decl. Ex. N.

Petitioners also learned that the City had the capability to deploy further searches with additional search terms applied to broader custodians, including by applying connectors to terms to narrow the scope of the hits consistent with the scope of the Request. Hoq Decl. Ex. O. The PMKs stated that doing so would not be unduly burdensome, as the results and responses could be returned within a day or two. Hoq Decl. Ex. P, pp. 20-22.

At the July 11, 2019 trial setting conference, the court ordered the parties to engage in further discussions regarding the adequacy of Respondents searches. Hoq Decl. Ex. Q, pp. 18-19. The court ordered Petitioners to submit search terms to the City, which would provide only document hit counts for each of the proposed search terms. Hoq Decl. Ex. Q, pp. 18-19.

On July 18, 2019, Petitioners sent the City a list of 38 terms. Hoq Decl. Ex. R. The City replied on July 22, 2019, indicating that it would provide hit counts for only six of the 38 proposed terms and that the remaining terms were "problematic at best" and appeared "far afield from [the] CPRA request" such that a meet and confer would be required to further discuss the terms. Hoq Decl. Ex. S.

Petitioners agreed to a meet and confer, which took place on August 6, 2019. Hoq Decl. Ex. T. The meet and confer was unsuccessful in narrowing the parties' disputes, despite Petitioners' offer to further narrow their list of terms to 34 and suggestion to use connectors to cut down the number of document hits. Hoq Decl. Ex. U. The City indicated that connectors were possible, but it was unamenable to this proposal. Hoq Decl. Ex. U.

Following the August 6 meet and confer, Petitioners renewed their request for the consideration of its proposed search terms in conjunction with the use of terms and connectors, this time with a further narrowed list of terms. Hoq Decl. Ex. U. Respondents maintained their assertion, however, that all but five of the search terms were irrelevant to the Request and that they would not provide hit counts for any further terms. Hoq Decl. Ex. O.

2. The City's Evidence[4]

a. LAPD

CPRA requests to LAPD are coordinated by LAPD's Discovery Section. Escalante Decl. ¶3. The Discovery Section determined that ten of LAPD's divisions might have responsive records to the Request, and sent it to those division, three of which forwarded the Request to their sub-divisions. Escalante Decl. ¶5. The ten divisions conducted a search for records based on their knowledge of the nature and scope of their work, their records, and their record-keeping practices. Each LAPD division, other than the Information Technology Bureau ("ITB"), selected and used terms that appeared in, or were derived from, the categories of records sought in the request. Escalante Decl. ¶6.

LAPD's ITB – which is tasked with conducting LAPD email searches -- conducted a search for LAPD email communications involving 24 specified individuals regarding CVE. Escalante Decl. ¶7. ITB conducted a search for LAPD emails containing the name of each of the identified individuals in conjunction with several search terms based on the Request. Escalante Decl. ¶7.

After this litigation began, the pertinent LAPD divisions conducted supplemental searches by (a) conducting a further electronic search of all divisional drives using additional search terms ("countering violent extremism", "countering", "counter-terrorism", "extremism", "extremist", "PATHE", "RENEW program", and "community advisory committee"), (b) manually searching any file cabinets or other locations where responsive documents would be located, and (c) identifying which current or former personnel would have had any involvement related to the search terms and determining whether they had responsive documents or emails. Escalante Decl. ¶8.

In July 2019, Petitioners for the first time requested that LAPD tabulate "hits" for a list of 38 search terms formulated by Petitioners. Escalante Decl. ¶9. In reviewing the search terms, the Discovery Section determined that 11 terms were reasonably tailored to efficiently produce all documents responsive to the Request: "Bayan", "Countering Violent Extremism," "CVE," "MPAC," "Muslim Public Affairs Council," "PATHE," "Providing Alternatives to Hinder Extremism," "PVE," "Preventing Violent Extremism," "RENEW," and "Recognizing Extremist Network Early Warnings." Escalante Decl. ¶10. LAPD agreed to and did tabulate a "hit" count for four of the search terms, which were run against the email accounts of seven LAPD custodians

[4] Respondents request judicial notice of the Reporter's Certified Transcript of the August 27, 2019 Trial Setting Conference in this case. Ex. 1. The court may not judicially notice a reporter's transcript, but a reporter's transcript from the case at hand is *prima facie* evidence without need for judicial notice. CCP §273.

whose names were included in Petitioners' list. Escalante Decl. ¶11. This process required LAPD to create a new record to document the results of the "hits". Escalante Decl. ¶11, Ex. A.

b. HRC

Beginning November 2018 and concluding in April 2019, HRC commenced searches for responsive records in connection to the Request. Moore Decl. ¶3. HRC used the following search terms: "CVE," "Countering," "Violent," and "Extremism." Moore Decl. ¶2. HRC considered these terms to be all-encompassing of the Request and reasonably expected to produce all responsive records. Moore Decl. ¶4.

In August 2019, pursuant to the request of Petitioners' counsel, HRC conducted additional term searches and tabulated the number of hits for the following terms: "PATHE," "Providing Alternatives to Hinder Extremism," "RENEW," "Recognizing Extremist Network Early Warnings," "MPAC," "Muslim Public Affairs Council," and "Bayan." Moore Decl. ¶5. These 11 terms are the most appropriately tailored to efficiently produce all responsive documents. Moore Decl. ¶5.

c. MOPS

The MOPS custodians who performed the document gathering in the Mayor's Office are well-acquainted with the CVE program and are in the best position to know how to search for the requested records, and MPOS performed a search reasonably calculated to locate all records responsive to the Request. Singer Decl. ¶2.

Petitioner's revised version of 38 search terms would produce far more results than would be necessary to locate responsive records to the Request. Singer Decl. ¶3. A search using the terms "CVE," "Countering," "Violent," "Extremism", "PATHE," "Providing Alternatives to Hinder Extremism," "RENEW," "Recognizing Extremist Network Early Warnings," "MPAC," "Muslim Public Affairs Council," and "Bayan" (the same terms used by HRC) would reasonably encompass the responsive records for the Request. Singer Decl. ¶3.

D. Analysis

Petitioners argue that Respondent City is obligated to search for records responsive to the Request using Petitioners' 38 search terms.

1. The Issue to be Tried

At the August 27, 2019 trial setting conference, the court noted that the parties previously had agreed that the City would perform a hit list of search terms so long as it was not an undue burden to do so. City RJN, p.2. The City Attorney clarified that the City agreed to perform a hit list search for some search terms, but not all because they were not reasonably calculated to produce responsive documents. Id., p. 3. The parties disputed whether the City performed this hit list search for four of six terms. Id., p. 4, 8-9. The City Attorney stated that this hit list search produced an estimated 10,000 hits. Id., p. 8.

After some confusion, it became clear that Petitioners were seeking a two-pronged result: (a) an initial determination that the City is required to conduct a hit list search using Petitioners' search terms, and (b) production of the documents found by the hit list. Id., pp. 7. The City Attorney took the position that, in seeking the use of their search terms and connectors, Petitioners were trying to craft the City's search for it. Id., p. 10. The court deemed the issues to be (1) whether the City should be compelled to conduct the additional search term hit list as reasonable

and within the scope of the Request, and (2) production of the documents discovered, which may be a follow-on case. Id., pp. 12. The court set trial for the first issue. Id., p. 14.

2. Case Law on the Adequacy of a Search

To determine if a search was adequate under the CPRA, California courts apply the standard used in Freedom of Information Act ("FOIA") cases, which provides that a search "need only be reasonably calculated to locate responsive documents" given the circumstances. ACLU v. Superior Court, (2011) 202 Cal.App.4th 55, 85 (citing Meerepol v. Meese ("Meerepol") (D.C. Cir. 1986) 790 F.2d 942, 951-56).[5] "[T]he issue to be resolved is not whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was adequate" in light of the relevant circumstances. Meerepol, *supra*, 790 F.2d at 951. An agency's search must be "reasonably calculated to locate responsive documents." Community Youth Athletic Center v. City of National City, ("CYAC"), (2013) 220 Cal.App.4th 1385, 1420 (citation omitted).

The scope of the search is dictated by the scope of the request. Id. "An agency is... obliged to search for records based on criteria set forth in the search request." California First Amendment Coalition v. Superior Court, ("CFAC"), (1998) 67 Cal.App.4th 159, 166. Based on the language of the request, an agency must "determine whether it has such writings under its control and the applicability of any exemption." Id. at 166. The agency's search "should be broad enough to account for the problem that the requester may not know what documents or information of interest an agency possesses." CYAC, *supra*, 220 Cal.App.4th at 1425 (citation omitted).

An agency is required to provide assistance to a requester who solicits help locating responsive records. §6253.1 (a)(1). An agency must be "sufficiently proactive [and] diligent in making a reasonable effort to identify and locate" the requested records. Id. The California Attorney General counsels that, "[a]t a minimum, [reasonable] efforts should include: consulting record indexes [,] consulting knowledgeable people [, and] looking in logical places." Office of the California Attorney General, Public Records Act Training at 31 (available at http://ag.ca.gov/publications/pra.pdf).

"Reasonable efforts do not require that agencies undertake extraordinarily extensive or intrusive searches, however. [Citation.] In general, the scope of an agency's search for public records 'need only be reasonably calculated to locate responsive documents.'" City of San Jose v. Superior Court, (2017) 2 Cal.5th 608, 627. The "CPRA does not prescribe specific methods of searching for those documents. Agencies may develop their own internal policies for conducting searches." Id.

An agency need only search files reasonably likely to contain responsive records. Jenkins v. United States, ("Jenkins") DOJ (D.D.C. July 12, 2017) 2017 U.S.Dist.LEXIS 107363, *7. The agency need not look beyond the four corners of the written request for leads to the location of responsive documents. Kowalczyk v. Department of Justice, ("Kowalczyk") (D.C. Cir. 1996) 73 F.3d 386, 389. It "is not required to expend its limited resources on searches for which it is clear at the outset that no search will produce the records sought." Reyes v. EPA, ("Reyes") (D.D.C. 2014) 991 F.Supp.2d 20, 27; Earle v. United States, DOJ (D.D.C. 2016) 217 F.Supp.3d 117, 123.

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[5] Petitioners contend that FOIA case law does not apply because CPRA's requirement for a search responsive to the "purpose of the request" (§6253.1) has no counterpart in FOIA. Reply at 3 (citation omitted). The "purpose of the request" language applies to vague requests which must be interpreted by the agency in the requester's favor and has no bearing on this case.

Moreover, if an agency shows it never had or no longer possesses the records requested, "the reasonable search required... may be no search at all." Reyes, *supra*, 991 F.Supp.2d at 27; Earle, *supra*, 217 F.Supp.3d at 124 (search would be futile where agency declaration showed records in question did not exist); Amnesty Int'l v. CIA, (S.D.N.Y. June 19, 2008) 2008 U.S.Dist.LEXIS 47822, at *34 (agency not required to search where it would be futile).

A clearly framed request which requires an agency to search an enormous volume of data for a 'needle in a haystack" or which compels the production of a large volume of material may be objectionable as unduly burdensome. CFAC, *supra*, 67 Cal.App.4th at 166. However, records requests impose some burden on agencies, and the agency is required to comply so long as the record can be recovered with reasonable effort. Id.

Ultimately, it is the agency's burden to prove the adequacy of its search by proffering evidence showing its search was reasonably calculated to locate all responsive records. Baltranena v. Clinton, 770 F.Supp.2d 175, 182 (D.D.C. 2011); CYAC, 220 Cal.App.4th at 1418 (quoting CFAC, *supra*, 67 Cal.App.4th at 167). An agency can show its search was adequate with affidavits showing where and how it searched for the records. Citizens Comm. on Human Rights v. FDA, ((9th Cir. 1995) 45 F.3d 1325, 1328. In evaluating the agency's evidence on this issue, courts should consider "such relevant factors as the amount of time and staff devoted to the request and whether the agency attempted to limit its search to one or more places when other sources likely would have contained [the] information requested." Landmark Legal Foundation v. E.P.A., (D.D.C. 2003) 272 F.Supp.2d 59, 62.

3. Merits

Petitioners assert that the proposed search terms are consistent with the purpose of the Request and reasonably necessary to ensure Respondent's compliance with the Request. Pet. Op. Br. at 11. Petitioners note that the court ordered Petitioners to provide search terms to the City, after which the City would provide hit counts. Pet. Op. Br. at 9 (citing Hoq Decl. Ex. Q, pp. 17-19). Petitioners provided a list of 38 search terms, and the City replied that it would provide hit counts for only six of the 38 search terms. Pet. Op. Br. at 9. After an August 6 meet-and-confer, the City refused to budge from its position, despite Petitioners' offer to further narrow their list of search terms and suggestion to use connectors to cut down the number of hits. Id. The City took the position that only five of the search terms were relevant to the Request. Id.

Petitioners argue that all of the remaining 28 search terms are consistent with the Request's purpose of finding records that will shed light on any CVE-related programming in the City and ensure transparency of the motivations, goals, and impact on the affected Muslim communities. Pet. Op. Br. at 12; Reply at 3-4. When combined with terms and connectors to limit the hits -- which the City admits is feasible (Hoq Decl. Ex. V, pp. 23-24) -- this list of search terms would not be an undue burden for the City, taking only a day or two to conduct. Hoq Ex. P, pp. 19-20. Pet. Op. Br. at 13; Reply at 7-8. Petitioners explain why each of the 28 search terms at issue are reasonably likely to find documents responsive to the Request. Pet. Op. Br. at 14-18. As most of the proposed search terms are referenced in the Request, and the rest are consistent with its purpose, Petitioners argue that the search terms are consistent with the purpose of the Request (*e.g.*, names of individuals who were involved in CVE efforts). Pet. Op. Br. at 11-12; Reply at 3-4.

The City argues that the purpose of the Request is irrelevant because the agency need not look beyond the four corners of the written request, citing Kowalczyk, *supra*, 73 F.3d at 389. Opp. at 7. This is incorrect. While the agency need not look beyond the four corners of the written

request for leads to the location of responsive documents (Kowalczyk, *supra*, 73 F.3d at 389), this has nothing to do with determining the scope of the request. As Petitioners argue, the scope of the request is determined by criteria set forth in the search request. CFAC, *supra*, 67 Cal.App.4th at 166. In other words, the scope of the request is determined by its literal language as clarified by its criteria.

The City notes that the parties have met 15 times since the Petition was filed to discuss the method of locating records responsive to the Request. Opp. at 2. Petitioners' counsel met with persons supervising and responsible for the pertinent City departments and discussed the proposed search terms. Opp. at 3. The City agreed to use 11 of Petitioners' proposed search terms and did so. According to the City's declarants, these 11 terms were reasonably tailored to gather the documents in the Request. Escalante Decl. ¶10; Moore Decl. ¶5; Singer Decl. ¶3.

This argument is more persuasive. Petitioners provide no authority that an agency must use the specific search terms provided by the requester. To the contrary, courts have repeatedly held that requesting parties cannot impose the use of specific search terms and that the agency has discretion in selecting search terms it believes to be reasonably tailored to uncover responsive documents. Bigwood v. U.S. Department of Defense, (D.D.C. 2015) 132 F.Supp.3d 124, 140; McClanahan v. U.S. Department of Justice, (D.D.C. 2016) 204 F.Supp.3d 30 (agency only required to search record systems reasonably likely to contain responsive records). "A federal agency has 'discretion in crafting a list of search terms that 'they believe [] to be reasonably tailored to uncover documents responsive to the FOIA request.'". Bigwood, *supra*, 132 F.Supp.3d at 140 (citation omitted). Where the search terms are reasonably calculated to lead to responsive documents, a court should neither 'micromanage' nor second guess the agency's search." Ibid. The CPRA similarly does not require the use of any specific method of searching for responsive documents and Petitioners fail to provide any authority demonstrating that the City is obligated to use specific search terms. City of San Jose, *supra*, 2 Cal.5th 608 at 627.

As opposed to the relevance of their own 28 additional search terms, Petitioners provide no evidence that the City's 11 search terms were not reasonably calculated to lead to responsive documents. The City argues that its search terms were reasonably calculated to lead to all records responsive to the Request, and it was not required to do any more. Opp. at 7-8. The City also argues that the use of Petitioners' 28 terms would require the City to act as an investigator or researcher. For example, the search term "interdiction" would require the City to conduct research to determine when a document's use of the term is responsive to the Request. Opp. at 8-9.

The City's argument is not dispositive because it, not Petitioners, has the burden of showing that the 11 search terms it used are reasonably calculated to locate all responsive records. Baltranena v. Clinton, *supra*, 770 F.Supp.2d at 182; CYAC, 220 Cal.App.4th at 1418. This burden should be met with declarations showing where and how the agency searched for the records. Citizens Comm. on Human Rights v. FDA, ((9th Cir. 1995) 45 F.3d 1325, 1328. In evaluating the agency's evidence, courts should consider "such relevant factors as the amount of time and staff devoted to the request and whether the agency attempted to limit its search to one or more places when other sources likely would have contained [the] information requested." Landmark Legal Foundation v. E.P.A., *supra*, 272 F.Supp.2d at 62.

There is no issue concerning the City custodians contacted and their manual searches. *See, e.g.,* Escalante Decl. ¶6. The remaining issue is the reasonableness of the City's electronic searches. On this issue, the City presents only conclusions that the 11 search terms used were reasonably tailored to gather the documents in the Request. *See* Escalante Decl. ¶10; Moore Decl. ¶5; Singer Decl. ¶3. This is inadequate to meet the City's burden. The City provides no details or

explanation why these search terms will gather the universe of responsive electronic documents or why the addition of Petitioners' search terms will not add to the reasonableness of the search. Without these details, the City has not met its burden to show the reasonableness of its search. *See* Reply at 6-7.

There are some search terms proposed by Petitioners -- such as "interdiction", "safe spaces", "Cal EMA", "Cal OES", and "Mark w/2 Howard" -- which are too broad for use, at least without a connector. However, most of Petitioners' proposed search terms do appear relevant to a reasonable search. The City's PMK admitted that there will be no undue burden in performing this search, and the compelled use of these search terms does not compel the City to produce any document. But first the City must conduct a reasonable search.

The City argues that the compelled use of Petitioners' search terms would unlawfully require it to create a new document, noting that an agency cannot be compelled under the CPRA when to create a new public record in order to provide responses to a CPRA request. Haynie v. Superior Court, (2001) 26 Cal.4th 1068, 1075. Opp. at 10. This argument is rebutted by two facts. First, as Petitioners note, the City previously agreed to provide a hit list and this part of the trial is about whether additional search terms must be included in the hit list as part of a reasonable search for documents within the scope of the Request. Reply at 8. Second, the City can be compelled to conduct a search using the additional terms whether or not it has to prepare a hit list. The hit list is simply an interim step to gathering the documents that must be produced.

F. Conclusion

The first part of the Petition is granted. The City is directed to conduct an additional search and prepare a hit list based on Petitioners' 28 search terms, with the exception of "interdiction", "safe spaces", "Cal EMA", "Cal OES", and "Mark w/2 Howard", unless the parties agree to narrow those terms by connectors. The court will discuss with counsel whether the case should proceed to a second step of production of the documents discovered. Petitioners argue that it should. Reply at 9. If so, the City would be entitled to present evidence of the production's undue burden.